

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

Alastair M. Craig, M.D.,

Plaintiff

v.

The Trustees of Dartmouth College

Defendant

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Docket No. 1:16-cv-00421-JL

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

NOW COME the Plaintiff, Dr. Alastair Craig, as well as the Trustees of Dartmouth College, by and through their undersigned counsel, and respectfully move to dismiss this case WITHOUT PREJUDICE to Dr. Craig's ability to re-file same in State Court, for the reasons more fully set forth below:

1. Dr. Craig originally brought claims against both the New Hampshire Hospital, a State-run inpatient facility under the supervision of the New Hampshire Department of Health and Human Services, and the Trustees of Dartmouth College, raising claims under federal and state age discrimination law, as well as common-law claims relating to the alleged violation of a 1993 Settlement Agreement between Dr. Craig and New Hampshire Hospital.

2. Dr. Craig subsequently filed a Notice of Dismissal Without Prejudice of his claims against New Hampshire Hospital. See Doc. 6. Dr. Craig has re-filed those claims in the Merrimack Superior Court.

3. Following discussions between counsel for Dr. Craig and counsel for Dartmouth, the parties have agreed that Dr. Craig will pursue his claims in this matter in Merrimack Superior Court where his claims against New Hampshire Hospital are currently pending.

4. Counsel for the parties have conferred and agree that this Stipulation of Dismissal will not bar Dr. Craig from bringing his claims against Dartmouth in the Merrimack Superior Court, and Dartmouth has agreed that it will not file a pre-answer Motion to Dismiss in that matter, and will not file any motions, and/or assert any affirmative defense or other defense based on Dr. Craig's re-filing of the Complaint in Merrimack Superior Court. Dartmouth expressly reserves all affirmative defenses raised in its Answer in this matter (Doc. 9). Except for motions and defenses based on Dr. Craig's re-filing of the Complaint in Merrimack Superior Court, Dartmouth expressly reserves the ability to file dispositive motions on the basis of defenses it properly and timely raises in its Answer to the lawsuit Dr. Craig plans to file in the Merrimack Superior Court, as well as any defenses that Dartmouth determines to be appropriate after discovery has commenced in that matter.

5. Allowing Dr. Craig to dismiss his claims without prejudice and to re-file them in the Merrimack Superior Court will be more efficient for the parties and the Court, and will avoid the potential for inconsistent outcomes. Furthermore, where this stipulation is signed by counsel for all parties who have appeared, dismissal is appropriate under Fed. R. Civ. Pro. 41(a)(1)(A)(ii).

WHEREFORE counsel for the parties respectfully seek an order:

- A. DISMISSING Dr. Craig's claims against Dartmouth **without prejudice**; and
- B. GRANTING such other and further relief as may be appropriate.

Respectfully submitted,

ALASTAIR CRAIG, M.D.

By his attorneys,
UPTON & HATFIELD, LLP

Date: January 26, 2017

By: /s/ Heather M. Burns

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AND

THE TRUSTEES OF DARTMOUTH
COLLEGE

By their attorneys,
WADLEIGH, STARR & PETERS, P.L.L.C.

Date: January 26, 2017

By: /s/ Kathleen C. Peahl

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via ECF on all counsel of record.

Date: January 26, 2017

/s/ Heather M. Burns